*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.8856 of 2007

% 4-10-2007

Kalamsetti Pedda Mallam Kondaiah
s/o.Gurallaiah
and others .. Petitioners

and

$ Government of Andhra Pradesh
Represented by its Principal Secretary,
Irrigation &Command Area Development
Department, Secretariat Buildings,
Hyderabad
and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri Balaji Medapalli

^ Counsel for respondents : Asst. G.P. for Land Acquisition

?CASES REFERRED :

1. 2000(2) ALT 519 (D.B.)=2000(3) A.L.D. 43 (D.B.)

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.8856 of 2007

Date : 4-10-2007

Between :

Kalamsetti Pedda Mallam Kondaiah
s/o.Gurallaiah
and others .. Petitioners

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Represented by its Principal Secretary,
Irrigation &Command Area Development
Department, Secretariat Buildings,
Hyderabad
and others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.8856 of 2007

ORDER:

1. Heard Sri Balaji Medapalli, Counsel representing the writ petitioners and the learned Assistant Government Pleader for Land Acquisition.

2. The learned Counsel for the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and also the stand taken in the counter affidavit and would maintain that the refusal to make reference on the ground that there is no specific protest in this regard cannot be sustained. The Counsel also placed strong reliance on **Special Deputy Collector, Land Acquisition Unit-ILL, Singur Project Vs. N.Sangaiah** [1].

3. The learned Assistant Government Pleader for Land Acquisition would submit that it may be that the specific form of protest may not be necessary, but the application should be within time.

4. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents/authorities in not referring the petitioners applications dated 13-8-2002 under Section 18 of the Land Acquisition Act which were received by the 3rd respondent on 19-8-2002 to a competent Civil Court against the Award Nos.7, 8, 9 and 10 dated 26-2-1999 pertaining to Rekalakunta village, Gopavaram Mandal, Kadapa District as arbitrary, illegal, null and void and violative of Article 300-A of the Constitution of India and contrary to the provisions of the Land Acquisition Act (hereinafter in short referred to as “Act”) and consequently direct the respondents to forthwith refer the applications dated 13-8-2002 filed

by the petitioners under Section 18 of the Act to a competent Civil Court for fixing fair, just and reasonable compensation to the structures and lands of the petitioners and to pass such other suitable orders.

5. It is stated in the affidavit filed in support of the Writ Petition that the petitioners are residents of Rekalagunta village, Gopavaram Mandal, Kadapa District. It is further stated that the Government of Andhra Pradesh had started construction of Somasila Project on the Bahuda river under series of Telugu Ganga Projects. In the said process of construction the respondents-authorities had decided to acquire the petitioners village for foreshore submersion under Somasila Project. Pursant to the same, the petitioners village was divided into several reaches and notifications had been issued under Section 4(1) of the Act for acquiring reach Nos.5, 6, 8 and 9 and the said notifications were published in the local News papers on 13-2-1996. The respondents-authorities had dispensed with the enquiry under Section 5-A of the Act by invoking powers conferred under Section 17(4) of the Act and published draft declarations on 26-2-1997. Thereafter the 3rd respondent passed different awards namely Award Nos.7, 8, 9 and 10 of 1998-99 dated 26-2-1999 for respective reaches. It is also further stated that after passing the Awards, the respondents-authorities had paid compensation to the petitioners on 12-8-2002 and the petitioners aggrieved by the Awards passed by the 3rd respondent had submitted their applications under Section 18 of the Act on 13-8-2002 along with requisite stamp duty seeking reference to the competent Civil Court for fixing the fair and just compensation. The respondents had received the same on 19-8-2002 and had entered the same in the Register that is being maintained to register the applications under Section 18 of the Act from Serial Nos.5056 to 5178. Thereafter, the respondents had failed to refer the matter to the competent Civil Court for fixing the fair and just compensation to the structures and the land belonging to the petitioners. It is also further stated that the entire properties of the petitioners along with their agricultural lands, residential houses and other structures were acquired for the purpose of foreshore submersion under Somasila Project and the petitioners are displaced persons due to the said acquisition. The respondents having received the applications in time, kept them pending since 19-8-2002 and aggrieved by the said action of the respondents, the Writ Petition is filed. It is also further stated that notices under Section 12(2) of the Act were given to the petitioners on 12-8-2002 and had paid the compensation to the petitioners on the same day and dissatisfied with the Award made by the 3rd respondent, the petitioners had sent their applications immediately i.e., on 13-8-2002 to the 3rd respondent which were received by the 3rd respondent on 19-8-2002. Therefore, the applications made by the petitioners are well within the limitation as stipulated under Section 18 of the Act. It is further stated that it is mandatory on the part of the respondents-authorities to refer the applications filed by the petitioners under Section 18 of the Act to the competent Civil Court for fixing the fair, just and reasonable compensation to the structures and the lands of the petitioners. The applications filed by the petitioners are lying with the respondents-authorities for the past several years and so far no action had been

taken on the said applications submitted by the petitioners. The petitioners are poor agriculturists and agricultural coolies. Due to the acquisition, the petitioners became shelter less and if proper compensation is not paid to the petitioners, they shall be put to hardship. The action of the respondents-authorities is nothing but arbitrary, illegal, null and void and against the principles of natural justice and violative of Article 300-A of the Constitution of India and contrary to the provisions of the Act. In such circumstances, the petitioners approached this Court praying for the relief aforesaid.

6. In the counter affidavit filed by the respondents, which is sworn to by the 3rd respondent, it is stated that the lands were acquired in Reach Nos.5, 6, 8 and 9 of Rekulakunta village covered by different Awards. The statement showing the particulars of the petitioners coming under various Reaches along with date of passing of Awards and issue of notices under Section 12(2) of the Act and the date of making payment of compensation is as hereunder :

Sl.No. of the petitioners
1,2,3,4,5,6,7,8,9,10, 11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,31
27,29,30,32,33,34,35,36,37,38,39,40,41
42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,65,66,67,68,69,70,71,72,
64,77,79,80,81,82,84,85,86,87,88

It is further stated that the 3rd respondent addressed a letter in Rc.No.11/2007 dated 31-3-2007 to the Special Deputy Collector, S.S.P., Atmakur of Nellore District requesting them to inform regarding the availability of Section 28-A applications in view of the Judgment delivered by this Court in W.P.No.27219/2006 and 27220/2006 dated 23-10-2006. The Special Deputy Collector (L.A.), S.S.P., Atmakur vide letter Rc.E/31/2007 dated 28-4-2007 had informed that 28-A applications were kept separately from the connected files of Rekulakunta and Boddecherla village and at the time of sending record files they were not noticed and sent 28-A applications and Section 18 references along with Xerox copy of the Register of 28-A. The records received from the Special Deputy Collector (L.A.), S.S.P., Atmakur had been examined. It is also further stated that 123 applications (Section 18 references) connected with the present Writ Petition were received by the Special Deputy Collector (L.A.), S.S.P., Atmakur and the said details are as hereunder:

Sl. No.	No.of Section 18 applications	Date noted in the applications	Regd.Post No.& Date	Actual date of receipt of applications in the office according to the initial and date stamp affixed on the applications	Reach Number to which the applications are related to			
1	8	16-8-2002	RPAD No.3951 dt.19.8.2002	26-8-2002	2	2	2	2
2	30	13-8-2002	RPAD No.250 dt.16-8-2002	19-8-2002	30	-	-	-
3	19	13-8-2002	RPAD No.249 dt.16-8-2002	19-8-2002	-	19	-	-
4	47	13-8-2002	RPAD No.251 dt.16-8-2002	19-8-2002	-	-	47	-
5	19	13-8-2002	RPAD No.248 dt.16-8-2002	19-8-2002	-	-	-	19

It is further stated that it is not correct to contend that the respondents-authorities had paid compensation to the petitioners on 12-8-2002. In fact, the land compensation had been paid to the Awardees on 4-7-2002 and all the petitioners received compensation on 4-7-2002 without any protest. It is also further stated that the contention of the petitioners that they had been given notices under Section 12(2) of the Act on 12-8-2002 is not correct. In fact the said notices were issued by the Special Deputy Collector on 29-6-2002 and the compensation was paid on 4-7-2002. Further, some of the Awardees other than the petitioners had received compensation on subsequent date i.e., after 4-7-2002 as the compensation relating to them was kept under 'Revenue Deposits' due to the absence of the pattadars or notified persons during Award enquiry or due to different reasons. The petitioners cannot take undue advantage of the date of compensation paid to the other Awardees at a subsequent date. The petitioners had received compensation on 4-7-2002 having received notices under Section 12(2) of the Act on 29-6-2002 i.e., prior to 4-7-2002. Even if it is presumed that the petitioners had received the notices under Section 12(2) of the Act a day before the date of receiving the compensation i.e., on 3-7-2002, the due date for filing Section 18 references shall lapse by 2-9-2002 as the Awardees have to file the same within two months from the date of receipt of the notice. It is also further specifically stated that no protest had been recorded by the Awardees at the time of taking the compensation. When the applicants' signatures and thumb impressions in the applications under Section 18 of the Act said to have been received through Registered Post were verified with the Code form CC acquittance in which the signature and the thumb impressions of the Awardees are available, they did not tally. In

some cases, instead of signatures, thumb impressions were put and as a whole, element of fraud had been suspected in the case. The petitioners are concealing the actual date of receiving the compensation i.e., 4-7-2002 and showing incorrect date i.e., 12-8-2002 as the date of receipt of notices under Section 12(2) of the Act. When the compensation is received on 4-7-2002, it is not correct to say that they had received the notices under Section 12(2) of the Act on 12-8-2002. The petitioners are not entitled to file references under Section 18 of the Act having received the compensation without protest. There is element of forgery in filing the references under Section 18 of the Act and if the same is allowed, it may turn into a scam.

7. In the light of the decision referred (1) supra, the ground that no protest had been lodged and hence the reference under Section 18 of the Act was declined, may not be sustainable. However, it is stated by the learned Assistant Government Pleader for Land Acquisition that these applications for making reference would be considered provided the said applications were made within time. In the light of the stand taken by the learned Assistant Government Pleader for Land Acquisition, the Writ Petition is hereby allowed to the extent of directing the respondents/authorities to consider the applications of the petitioners to make due reference under Section 18 of the Act provided those applications were made within the time in accordance with Law. No order as to costs.

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Justice P.S.Narayana

Date : 4-10-2007

L.R. copy to be marked : YES / NO

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[1] **2000(2) A.L.T. 519 (DB)= 2000(3) A.L.D.43(DB)**